

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY JAMES BROOKSHIRE,  
Plaintiff,

v.

SACRAMENTO COUNTY SHERIFF'S  
DEPARTMENT,  
Defendants.

No. 2:23-cv-2001 KJN P

ORDER

Plaintiff is a jail inmate, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the

amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

### Screening Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at 1227.

Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555. However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal

quotations marks omitted). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

#### Plaintiff's Complaint

Plaintiff alleges that unidentified plainclothes officers used excessive force on plaintiff on May 31, 2023, during his arrest, and during his escort to the hospital for medical care, and upon arrival at the jail where he was roughly snatched out of the vehicle while handcuffed and forced into a body restraint called a WRAP, despite having been informed by medical staff at the hospital that plaintiff had a fractured back and hand. Plaintiff seeks money damages for the violation of his Fourth Amendment rights. Plaintiff names the Sacramento County Sheriff's Department as the sole defendant.

#### Discussion

Plaintiff alleges that despite informing plainclothes officers from the Sacramento County Sheriff's Department that plaintiff's hand and back were broken, such officers used excessive force in arresting plaintiff and subsequently during his escort to the hospital and upon arrival at the jail for booking.<sup>1</sup>

"[A]ll claims that law enforcement officers have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard[.]" Graham v. Connor, 490 U.S. 386, 395 (1989). Whether an officer's use of force is "reasonable" "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Id. at 396 (citation omitted).

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<sup>1</sup> Plaintiff's claims concerning excessive force during the booking and after are proceeding in Brookshire v. Sacramento County Main Jail, No. 2:22-cv-2000 JDP P (E.D. Cal.). A court may take judicial notice of court records. See, e.g., Bennett v. Medtronic, Inc., 285 F.3d 801, 803 n.2 (9th Cir. 2002) ("[W]e may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue") (internal quotation omitted).

Here, plaintiff fails to address all of the elements required under Graham, in particular, any details concerning the crime at issue and other facts and circumstances of the alleged use of force.

Plaintiff is granted leave to amend to provide such additional factual allegations.<sup>2</sup>

Importantly, however, plaintiff cannot proceed with this action until he identifies at least one viable arresting officer by name. Here, plaintiff names only the Sacramento County Sheriff's Department. But plaintiff includes no charging allegations as to such defendant. Thus, plaintiff's complaint must be dismissed so that he may name a proper individual defendant.

#### Leave to Amend

The court finds the allegations in plaintiff's complaint so vague and conclusory that it is unable to determine whether the current action is frivolous or fails to state a claim for relief. The court determines that the complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants engaged in that support plaintiff's claim. Id. Because plaintiff failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions about which he complains resulted in a deprivation of plaintiff's constitutional rights. See, e.g., West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a

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<sup>2</sup> Plaintiff is facing criminal charges at the Sacramento County Superior Court. People v. Brookshire, 23FE008042 (Sac. Co. Sup. Ct.). Trial is currently set for February 26, 2024, and he is represented by counsel. Sacramento County Public Case Access System, Sacramento Superior Court <services.saccourt.ca.gov/PublicCaseAccess/Criminal/> (accessed Feb. 2, 2024). The court may take judicial notice of facts that are "not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned," Fed. R. Evid. 201(b), including undisputed information posted on official websites. Daniels-Hall v. National Education Association, 629 F.3d 992, 999 (9th Cir. 2010). It is appropriate to take judicial notice of the docket sheet of a California court. White v. Martel, 601 F.3d 882, 885 (9th Cir. 2010).

1 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633  
2 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague, and conclusory allegations of official  
3 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,  
4 268 (9th Cir. 1982).

5 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
6 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
7 complaint be complete in itself without reference to any prior pleading. This requirement exists  
8 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez  
9 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint  
10 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation  
11 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any  
12 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim  
13 and the involvement of each defendant must be sufficiently alleged.

14 In accordance with the above, IT IS HEREBY ORDERED that:

15 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
17 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
18 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
19 Sheriff of Sacramento County filed concurrently herewith.

20 3. Plaintiff's complaint is dismissed.

21 4. Within thirty days from the date of this order, plaintiff shall complete the attached  
22 Notice of Amendment and submit the following documents to the court:

23 a. The completed Notice of Amendment; and

24 b. An original of the Amended Complaint.

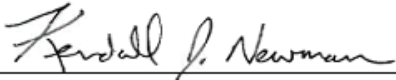
25 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the  
26 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must  
27 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

28 Failure to file an amended complaint in accordance with this order may result in the

dismissal of this action.

5. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights complaint by a prisoner.

Dated: February 6, 2024

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order  
filed \_\_\_\_\_.

DATED: \_\_\_\_\_ Amended Complaint

\_\_\_\_\_  
Plaintiff